SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 505

CHARLES KOVACS, *Appellant*,

v.

ALBERT COOPER, JR., Judge of the First District Police Court of Trenton

APPEAL FROM THE COURT OF ERRORS AND APPEALS OF THE STATE OF NEW JERSEY

MEMORANDUM ON BEHALF OF THE CONGRESS OF INDUSTRIAL ORGANIZATIONS AND CERTAIN OF ITS AFFILIATED ORGANIZATIONS, AMICI CURIAE

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Henry Mayer, General Counsel
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Meyers, Meyers & Rothstein, General Counsel
United Farm Equipment & Metal Workers of America
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Food, Tobacco, Agricultural and Allied Workers Union of America
Benjamin Robinson, General Counsel
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United Electrical, Radio and Machine Workers of America
Benjamin C. Sigal, General Counsel
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International Fur and Leather Workers Union
International Union of Mine, Mill and Smelter Workers

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT:

This memorandum is filed, pursuant to the consent of all parties, in accordance with Rule 27 (9) of this Court.

INTEREST OF PARTIES FILING THIS MEMORANDUM

This case involves the validity of a Trenton, N. J., ordinance prohibiting the use of loud speakers on the public streets and does not present any issues with respect to the extent to which the use of such devices may be regulated in the public interest.

The issues of law raised by the instant appeal are of the utmost importance to the Congress of Industrial Organizations, its affiliated organizations and their members. As will be indicated in this memorandum loud speakers are indispensable to labor organizations and their members as a means of effective communication. The ordinance now before the Court

is typical of a large group of ordinances which have seriously impaired the exercise by workers and their labor organizations of the right of free communication.

MEMORANDUM

In recent years amplifying systems have become increasingly important to the labor movement.

Loud-speaking devices have assumed a critical importance in the field of communication with respect to labor issues and controversies for a number of reasons.

In the first place, the sheer size and physical magnitude of a plant in such an industry as auto, textile and steel makes the use of these devices imperative in order to reach an audience of workers in the plant or going to the plant. Amplification of the speaker's message is necessary in order to reach the physically dispersed audience in a modern plant or factory.

In the second place, amplification is frequently the only way in which a union can bring its message to the workers in a plant where ingress and egress are controlled by a hostile employer. Many modern plants are frequently situated on private property and policed by private guards who bar access to union representatives. It therefore becomes necessary, where this situation prevails, to use amplification in order to send a message from a point outside of the area controlled by the employer.

A related problem frequently arises where access is denied (or so severely limited as to be rendered ineffective) by injunctions which restrain or regulate the number, conduct and message of pickets.

In the third place, amplification is vital in the field of industrial communication where the need is to reach a particular type of audience. For example, the facts with respect to labor controversies in areas which involve service to the public can most effectively be brought home to the public, upon whose attitude the outcome of the controversy may turn, through the use of some form of amplification. It is obvious that the message of a picket patrolling an establishment on a crowded street will be far less effective for this purpose than the same message broadcast through a loud-speaking device.

Finally, whether the need be to reach an audience which is physically dispersed, geographically removed, or of a particular character, there can be no denying the fact that a message broadcast through amplifying equipment carries a unique urgency and dramatic quality.

We believe that the ordinance before the Court in the instant case is condemned by a long series of cases decided by this Court. The ordinance, in our view, cannot survive the principles enunciated by this Court in *Hague* v. *C. I. O.*, 307 U. S. 496. And the decision of the Court in *Martin* v. *Struthers*, 319 U. S. 141, cannot be reconciled with the justification supplied for the validity of the ordinance by the New Jersey Supreme Court.

The use of loud-speaking equipment involves fundamentally an attempt to exercise the right of free speech in an effective and realistic manner. This Court has frequently recognized that the protection of civil rights involves a protection of those rights through forms most appropriate to their exercise. *Cf. Gompers* v. *U. S.*, 283 U. S. 604, 610.

The decision of the New Jersey Supreme Court, however, withholds constitutional protection at precisely the point where protection is most needed, namely, where the exercise of the right is most effective.

Ordinances of the type here in issue have been passed by a growing number of municipalities in the United States. A few representative examples of these ordinances are collected in the Appendix to this Memorandum. If the decision of the New Jersey Supreme Court is left standing it will serve to invite the passage of ordinances in other municipalities limiting or prohibiting the use of sound equipment.

We urge that the Court note probable jurisdiction in the instant case and invalidate the ordinance.

We are aware that the Court has noted probable jurisdiction in *Saia* v. *People of New York*, No. 504, this Term. However, it should be pointed out to the Court that the ordinance involved in that case differs sharply from the Trenton ordinance. Under the ordinance involved No. 504 certain types of public dissemination through loud-speaking devices are per-

mitted upon permission from the Chief of Police. In the present case all forms of communication are outlawed.

Moreover, the present case involves the use of loud-speaking equipment upon a public street while the facts in No. 504 involve the use of such equipment in a public park.

Respectfully submitted,

LEE PRESSMAN,
General Counsel,
FRANK DONNER,
Assistant Counsel,
Congress of Industrial Organizations, and United Steelworkers of America.

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United Office and Professional Workers of America
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APPENDIX

MUNICIPAL ORDINANCES PROHIBITING OR LIMITING THE USE OF LOUD-SPEAKING EQUIPMENT

Chicago, Illinois (Section 99-56 of the Municipal Code)

No person shall make, or cause, permit or allow to be made, upon a public way, or in such close proximity to a public way as to be distinctly and loudly audible upon such public way, any noise of any kind by crying, calling, or shouting or by means of any whistle, rattle, bell, gong, clapper, hammer, drum, horn, hand organ, mechanically operated piano, other musical instrument, wind instrument, sound amplifier, or similar mechanical device; provided, that the said restrictions shall not apply to any licensed peddler crying or calling for the purpose of advertising goods, wares or merchandise when lawfully using any public alley in the city between the hours of 11 a. m. and 6 p. m.

Concord, North Carolina

Section M. The use of any drum, loud speakers, or other instrument or device for the purpose of attracting attention by creation of noise to any performance, show, sale, display or advertisement of merchandise.

Section N. The use of mechanical loud speakers or amplifiers on trucks, airplanes or other vehicles for advertising or other purposes except where specific license is received from the city. (Chief of Police)

Ilion, New York

NOTICE OF ORDINANCE

At a regular meeting of the Board of Trustees of the Village of Ilion held at the Municipal Building on the 19th day of March, 1941, all members being present as follows: Oliver S. Coleman, President; Trustees Lester, Lory, Miller and Morrison, the following ordinance was duly presented and adopted:

Section 1. This ordinance shall be known as an ordinance to regulate the use of radio, musical instruments, mechanical

musical instruments, loud-speaking devices and all other sound-producing devices whereby sound is cast or propelled upon the public streets and places in the Village of Ilion.

Section 2. No person, firm or corporation shall operate or play or cause to be operated or played in or upon any building, street, premises, vehicle or thing of whatsoever name and nature, any radio, mechanical musical instrument, musical instrument, loud-speaking devices of whatever name or nature, whereby sound therefrom is cast or propelled upon the public streets and places in the Village of Ilion or upon adjoining or other premises therein, and the peace, repose, comfort and health of travelers upon the public streets or public places in the Village of Ilion or persons in or upon neighboring or other buildings and premises is disturbed.

Section 3. The terms peace, repose, comfort and health of travelers upon public streets or places in the Village of Ilion or persons in or upon neighboring or other premises as used in the foregoing section shall be deemed to be disturbed if the sound be heard a distance of twenty-five feet from its source, or if the public thoroughfare is obstructed or caused to be obstructed by reason thereof.

Section 4. The disturbance of the peace, repose, comfort and health of travelers upon public streets or places in the Village of Ilion or persons in or upon the neighboring or other premises shall be deemed a nuisance and may be abated forthwith, and the person, firm or corporation causing such disturbance shall be deemed to be disorderly persons.

Section 5. This ordinance shall not apply to the lawful use of horns or other warning devices used upon motor vehicles for the purpose of warning the traveling public or to church and school bells and chimes, and chimes on public clocks, nor to the use of loud speakers and other sound devices in connection with all lawful assemblies, election campaigns or by the Village of Ilion, its officers, servants and employees. The use of loud speakers and other sound devices in connection with lawful assemblies and election campaigns shall be permitted only upon written permission of the Clerk of the Village of Ilion upon application duly made prior to such use or proposed use stating the time when and place where the use thereof.

is contemplated. No permission, in any event, shall be granted if the use thereof shall in any manner interfere with the use of the public streets and places in the Village of Ilion.

Section 6. Any person, firm or corporation violating this ordinance shall forfeit any pay to the Village of Ilion a sum not to exeeed One hundred dollars, and in addition thereto shall be deemed a disorderly person and as such punishable by a fine not to exceed One hundred dollars.

Section 7. This ordinance shall take effect immediately.

The adoption of the above ordinance was moved by Trustee Lory and seconded by Trustee Miller, and upon being put to a vote by President Coleman, the following trustees voted "Aye": Trustees Lester, Lory, Miller and Morrison, and there was no negative vote.

ROY W. BENNETT,
Village Clerk.

Schenectady, New York

Radios, Phonographs, Etc., Regulating Use of Radio (Sound Making)

Ordinance No. 6764

An Ordinance governing the use of Radios, Phonographs and other mechanical or electrical sound-making or reproducing devices, instruments or machines.

Section 1. No person occupying or having charge of any building or premises, or any part thereof, in the City of Schenectady, N. Y., for business purposes, excepting for the manufacture of the herinafter described articles, shall cause, suffer or allow any radio, phonograph or other mechanical or electrical sound-making or reproducing device, instrument or machine, including so-called loud speakers, to be used or operated on said premises, nor in connection therewith, so that the sound therefrom shall be heard by persons in the streets or elsewhere outside of said premises so as to annoy or disturb them or be injurious to their health or comfort, except as hereinafter provided.

Section 2. The Mayor, in his discretion and upon payment by the application of a fee of One ($1.00) Dollar, may issue for

a specified length of time, permits for the operation of loud speakers in connection with the broadcasting of events of general local interest, and applications for such permits shall be made in writing and shall be signed by the person having charge or control of the premises upon which, or within which, such loud speakers are to be used or operated, and shall contain a statement giving the location of the said premises, the nature of the business transacted thereon, and the hours during which it is desired to operate the said instrument.

Section 3. Every person offending against the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than Twenty-five ($25.00) Dollars for each offense; each day or part of each day that this Ordinance shall be violated shall constitute a separate offense.

Section 4. This Ordinance shall take effect immediately after publication thereof, three a week for two successive weeks in the official newspaper.

Section 5. This Ordinance may be known and cited by the following short title, "RADIO, PHONOGRAPHS, ETC., REGULATING USE OF RADIO (SOUND MAKING)."